

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO. 2576/96**

**E K**

**AT CHRISTCHURCH**

<b><u>Before:</u></b>	G J X McCoy (Member)
<b><u>Counsel for Appellant:</u></b>	In Person
<b><u>Representative for NZIS:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	6 September 1996
<b><u>Date of Decision:</u></b>	26 March 1997

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**DECISION**

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This is an appeal against the decision of the Refugee Status Branch (RSB) of the New Zealand Immigration Service declining the grant of refugee status to the appellant, a citizen of Kazakhstan.

**THE APPELLANT'S CASE**

The appellant is a 38 year-old man born in C, Kazakhstan. He fears returning to both Russia and Kazakhstan. He is a divorced man with a 14 year-old son, who lives in Kazakhstan.

The appellant is an artist with high tertiary qualifications. For 13 years he was a teacher of fine arts at a tertiary institute. The appellant also ran his own business, as head of a co-operative society involved in design work. When the appellant was asked by the Authority why he left Kazakhstan to go to work in Eastern Russia as a sailor, he initially said the economic situation was very difficult and he had to find a job. During the hearing a very different set of reasons emerged.

The appellant was last in Kazakhstan in 1993.

He undertook a three-month course training in Russia to be a seaman. The appellant said it was rather difficult to get a seaman's passport or a visa and for all applicants there were military record issues. Between 1980 and 1982 the appellant had undergone one and a half years military service as a conscript, and met the eligibility requirements.

The appellant has never been to any other country except Kazakhstan, Russia and New Zealand. On the way to New Zealand the vessel arrived in Korean waters, but they did not go ashore.

The appellant came to New Zealand on a vessel called Prosvetitel. There were 68 people on board, of whom five jumped ship and claimed refugee status. The appellant was the only Kazakh on board the vessel which arrived at Lyttelton on 10 January 1995 and the appellant applied on 23 May 1995, through a solicitor, for refugee status.

The appellant first told the Authority of his fears about returning to Kazakhstan because he had jumped ship. It was observed by the Authority, that this did not seem to be a particularly strong point by which to claim refugee status. The reasons for jumping ship might be very important, but jumping ship itself was inconsequential. The appellant at this stage became somewhat agitated.

The Authority had given the orthodox warnings about confidentiality and the appellant said he did not want to say anything more about Kazakhstan because he was concerned the Authority would check up with the Government about his individual life in Kazakhstan. He said:

"I am concerned about you checking into the information I am going to reveal".

After the Authority made it perfectly clear, again, that nothing would leave the room and that the Authority was a truly independent non-Government body, the appellant completely changed his demeanour and for the first time said the following:

"I was running my own business. I was the head of a co-operative society. I had 22 workers underneath me. We were developing a business in industrial design and agricultural design. In each area in Kazakhstan there is an oblast. An oblast is a Department of the Militia within the Department of the Home Affairs. In the oblast there is the headquarters of a Department which supervises all cases of

commercial crime within the government. I had a very tense relationship with these people. They controlled me very often. Approximately once in every two months they used to come to my place and check my business with the aim of extorting money from me. I was getting squeezed by both the city department and the district department of both these organisations. The organisation is called 'Department Number 6' dealing with the theft of large amounts of money and fighting crime. While it was supposed to be fighting crime it was actually propagating crime in the most severe way."

The appellant stated that these people wanted to obtain bribes from him and they would name the exact amount of money that they wanted. "This sounds ridiculous", the appellant said, "but this is what happened". The very people who were supposed to be keeping the law were the ones who were breaking it. They pushed him to give bribes to them.

The appellant was asked why he stopped paying bribes and stopped his business.

Quite a few of the appellant's friends worked for the KGB. People in Kazakhstan did not treat the giving and taking of bribes as a big crime. Department 6 interfered with the lives of prominent people. The rich and the intellectuals were the special targets. It was difficult to dismantle the old ways.

The appellant would still be in his business but during his last meeting with Department 6 people, they forced him to work for them, and to report to them, about others. They wanted him to spy on other people. This began in 1993. He signed a document that stated when, how and the terms in which he had to report. He was given an assumed name with which he had to sign all correspondence. By seeing his name they would know he was in fact the source of the information. Sometimes the appellant was required to turn up for meetings at various times, specifically appointed by them, to deliver information. Sometimes they would visit him without warning. They had him spy on his own friends, other heads of other co-operative societies, some of whom were not paying taxes and were making illegal purchases. This went on for six months.

The appellant told the Authority that he could not take it any longer. He actually gave them no information. Therefore, they started framing him. If he was not giving them information they would make great trouble for him, they said. If he did not report on his friends, as expected, he would be destroyed. In 1993 it was very hard for the people who ran co-operatives to purchase raw materials. There were limits imposed on purchases. It was virtually impossible to purchase raw materials by legal means. The appellant's business was very busy. He had very good

orders. It was very hard to find raw materials and it was forbidden by law to pay cash. It was a common problem. Apart from the 22 employees the appellant also had 40 other people who worked by contract under him. He used to make 14% profit on average on every one of the contracts. His family was very well off in Kazakhstan but the appellant's life was turned upside-down by Department 6.

After the last talk he had with Department 6, they threatened him. The appellant had intensely disappointed them. Now they would make him the victim. Department 6 said they would take action against him. They said they would create problems for him if he did not provide very useful information. They would close his co-operative down and within 10 days he would be in Court facing a trumped-up charge or charges. During this time the appellant was paying bribes - 10,000 roubles per month when the average wage was only 200 roubles per month. The state was squeezing him. He was paying for his active non co-operation. The appellant reached breaking point. The deadline imposed by Department 6 was looming. He was a traitor in their eyes. He had repeatedly rejected their requirements. The appellant fled for the East to Maritime Russia. He left most of his documents behind, all those which belonged to the co-operative, and the seal of the organisation. He gave them to his brother who would carry on after he left.

The abbreviation OBKHSS stands for the Ministry of Home Affairs Economic Department. Department 6 is a Department within the OBKHSS but it has no special name. Department 6 represents the State of Kazakhstan. Its relationship with the appellant was a political matter. The appellant said non co-operation and escape were the only possibilities. He knew they had no legal authority to force people to spy on each other. Department 6 had the same authority as the KGB. The appellant was dealing with people of high rank - colonels. There was no appeal against their decision.

The Authority asked the appellant how he managed to escape. He replied:

"They are not able to chase somebody because it is a poor country and they don't have the money to chase people across the world."

The appellant fled leaving behind his son and former wife. The appellant recounted :

"I even ran an art gallery. I was an artist but I was forced to become an ordinary sailor to escape their persecution. In June 1993 I had fled to the other side of

Russia. On my first trip I worked in the north of Russia for two months on board and then my first chance to leave Russia was in December 1994, which was this particular trip. It is impossible to control these people. I have high tertiary education qualifications. I am rejected by them. I am stateless. If I return I am an easy victim for the KGB and Department 6. These people are big fish in a small pool. Although the town I lived in only had 250,000 people, I fear they will take recriminations against me because, by refusing to help them it is a political activity for a political state department."

## **THE ISSUES**

The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:-

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it."

In terms of Refugee Appeal No. 70074/96 Re ELLM (17 September 1996), the principal issues are:

1. Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
2. If the answer is yes, is there a Convention reason for that persecution?

## **ASSESSMENT OF THE APPELLANT'S CASE**

The Authority believes what the appellant said. The appellant had deliberately refrained from telling his life story to the RSB, as he felt unconvinced that the Immigration Service would not take some action prejudicial to him, and it would be action which would affect his family in Kazakhstan. The appellant did not tell any of this to the immigration officer. He told the Authority that he did not want to reveal this even at the present hearing.

The Authority found the appellant to be sincere. There was an enormous sense of relief in finally telling someone about his past. It was cathartic. The appellant was articulate, cultured and measured in his evidence.

In a 1994 UNHCR publication "U.S. Department of State Country Reports on Human Rights Practices for 1994" it was stated in relation to Kazakhstan:

"The Ministry of Internal Affairs supervises the criminal police, who are poorly paid and corruptible."

The same publication for the succeeding year, is to the same effect. But it adds:

"Even President Nazarbayev noted during a September speech to the Government anti-crime task force that "in people's minds, the word 'police' is associated with cruelty, arbitrariness, and bribery."

In a separate UNHCR publication in 1992 "Kazakhstan : Information on the powers and structure of the KGB" it was revealed that Kazakhstan now has its own security force under the Ministry of Interior which performs functions similar to the KGB.

In the "US Department of State Kazakhstan Country Report on Human Rights Practices for 1996" and dated 30 January 1997 it is noted:

"The Committee for National Security (KNB, successor to the KGB) continued efforts to legitimise its role by focussing on activities to combat terrorism, organised crime and official corruption ... However, the KNB and Ministry of Internal Affairs with the concurrence of the General Prosecutor's office, can and do arbitrarily interfere with privacy, family, home and correspondence... The KNB has the right to monitor telephone calls and mail."

Perhaps most importantly, on the facts of the present appeal, is this striking statement from "US Department of State Country Reports on Human Rights Practices for 1993" published in respect of Kazakhstan:

"The Committee for National Security (KNB) ... is a continuation of the old Soviet Committee for State Security, or KGB. It retains, for instance, the authority to deny citizens permission to travel in and out of the country, to requisition property, and to demand co-operation by citizens (e.g. to inform on other citizens). Declining real wages for the criminal police, which is subordinated to the Ministry of Internal Affairs, resulted in increased corruption." (Emphasis added).

The appellant was last in Kazakhstan in 1993, the very year highlighted by the UNHCR as the year in which citizens were being pressurised by the state to spy on other citizens.

On the basis of the appellant's evidence, and the country information available, the Authority finds that there is a real chance that the appellant will be persecuted by the State of Kazakhstan, for his refusal to spy on his friends and colleagues, for

the State. Department 6 was the State - the appellant's brave defiance was the expression of an imputed political opinion, that challenged the core authority, of the most intrusive aspects of the State's conduct.

The appellant was not an ordinary victim of an extortion racket. This was not like a case of the Mafia being aggrieved with the mere non co-operation by someone. His spying was on behalf of the State. He failed to co-operate. Then the State threatened him. The appellant had been warned of the consequences of refusal to co-operate. On all the facts found, the Authority is satisfied that there is a real chance on these special facts that the appellant will be persecuted in Kazakhstan. This was an extraordinary case. The appellant's account had all the indicia of an intellectual who took flight from the State for refusing to acquiesce in spying for the State and for lying for the State.

For the reasons given, which imply no criticism of the RSB to whom the appellant had never told his life story, the appeal succeeds.

The Authority finds that the appellant is a refugee within Article 1A(2) of the Refugee Convention. The appeal is allowed. Refugee status is granted.

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Member